

**DEMOLISHED:
FORCED EVICTIONS AND THE TENANTS' RIGHTS
MOVEMENT IN CHINA**

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I. SUMMARY

Demolition and eviction has several decades of history in China. In the past, ordinary people longed for demolition and eviction [because they were moved to better homes], but now ordinary people fear demolition and eviction, they hate [it], and even use death and suicide to oppose [it].. This hatred, this opposition to demolition and eviction has really only appeared in the last few years.

- 'Tenants' rights advocate Xu Yonghai, "Open letter to General Secretary Hu Jintao and the Central Committee"¹

At 8:45 on the morning of September 15, 2003, forty-five-year-old farmer Zhu Zhengliang and his wife sat down in Tiananmen Square under the portrait of Mao Zedong. As his wife quietly watched, Zhu doused himself with gasoline and set himself alight. Police stationed in the square rushed to his aid, and Zhu was hospitalized in Beijing with minor burns on his arms and back. According to news reports, Zhu attempted self-immolation to protest his family's forced eviction from their home in a rural region of Anhui province.²

Zhu's was the most prominent, but by no means the only, attempted suicide to protest forced evictions in China in 2003. In August, a Nanjing city man who returned from a lunch break one day to find his home demolished, set himself afire and burned to death at the office of the municipal demolition and eviction department.³ In September, resident Wang Baoguang burned himself to death while being forcibly evicted in Beijing.⁴ On October 1, China's National Day, Beijing resident Ye Guoqiang attempted

¹ Xu Yonghai, *Open letter to General Secretary Hu Jintao and the Central Committee*, June 10, 2003, www.boxun.com, posted October 5, 2003.

² "Farmer sets self on fire in Tiananmen Square," *China Daily*, September 15, 2003; An Zhiyong, "*Chaiqian jiu fen shi dao zhi Anhui nongmin zai Tiananmen zishade yuanyin* [Demolition and eviction conflict caused Anhui farmer's suicide [sic] in Tiananmen]," *Nanfang dushi bao* [Southern Metropolis Daily], September 17, 2003.

³ An Zhiyong, "Demolition and eviction conflict..."

⁴ "*Beijing chaiqianhu yin hangyi zao qisu* [Beijing evictees charged for demonstrating]," BBC Chinese service, November 13, 2003.

suicide by jumping from Beijing's Jinshui bridge to protest his forced eviction for construction related to the 2008 Beijing Olympics.⁵ These suicides and attempted suicides were the most dramatic in a wave of almost daily protests that swept cities across China from September to December 2003.

This report, based largely on published Chinese-language sources—including press accounts, Internet discussions, expert commentary, and government laws, regulations, and statements—details the problems many Chinese citizens face as they are evicted from their homes, sometimes violently, by state and private actors. Many of these forced evictions violate basic human rights protections in both Chinese and international law. The report also provides an overview of current eviction and demolition practices in China's cities, the regulations governing such practices, and the parties involved. It traces the emergence over the past several years of a vibrant tenants' rights movement and the government's recent crackdown on some of the leading figures.

The issue of forced evictions in China has begun to receive attention in official circles, and has even prompted a constitutional amendment, but significant hurdles remain. If the deficiencies in implementation of laws are not remedied and rights of evictees not upheld, eviction practices can be expected to serve as a continuing source of high profile social unrest and at times extreme forms of protest. In Beijing, the clearing of new sites for Olympics venues likely will continue to be a flashpoint.

To some extent, the scope of the evictions and of protests against them detailed in this report are inevitable byproducts of China's unconstrained development and the eagerness of many local officials for rapid modernization. In many cities, new high-end residential communities, shopping malls, and golf courses are replacing the stone houses, courtyards, and *hutong* (胡同, alleys) that characterized old China. After surviving long winters in unheated, drafty older buildings, many of which lack indoor plumbing, some

⁵ "Beijing evictees charged...", BBC Chinese service.

urban residents now enjoy new and comfortable apartments. Many people in China express pride in their country's rapid modernization, even while others mourn the loss of the country's traditional architecture.

However, a rising tide of complaints by people around the country, reported in Chinese media and posted on the Internet, raises shared concerns. Residents in many cities say the process of "demolition and eviction" (*chaiqian* 拆迁) is arbitrary, marred at all levels by a lack of due process for those evicted from their homes. They point out that China lacks basic property rights protections, so homeowners are just as vulnerable as renters to sudden eviction with minimal compensation. Many point to widespread corruption and other deep-rooted conflicts of interest in local government that tie the interests of powerful developers to those of local officials.

China's weak judicial system also frequently fails its citizens in this matter. Evicted residents have tried to seek redress in the local courts, but many find that courts refuse to hear the cases because of pressure on judges and lawyers by local Communist Party officials. In the rare instances when a court finds in favor of residents, their homes are likely to have already been demolished. Some have even complained of *yeman chaiqian* (野蛮拆迁)—"savage" or violent eviction by hired thugs, wrecking crews and bulldozers that maim or kill residents while clearing sites for new construction.

Given the lack of routes for legal redress, it is unsurprising that many angry residents have taken to the streets to protest. In September, many traveled to Beijing to stage peaceful sit-ins and marches on October 1, a national holiday; many more did so in the following months. In response, authorities cracked down on demonstrators, jailing many and preventing hundreds of others from boarding trains bound for Beijing. Beijing even passed municipal regulations prohibiting "suicide protests."⁶ Frustrated

⁶ "Beijing's new self-immolation law," *Asia Times*, October 31, 2003. Suicide as a form of protest has a long history in China, dating back to at least 3 BCE. Because the emperor ignored poet and official Chu Yuan's

residents have taken to contacting international media and human rights groups, and to posting their personal stories on Internet bulletin boards—all risky choices, given the government’s monitoring of the Internet and international telephone calls, and the ever-present danger of charges of “state subversion.”

The Chinese government has used politically motivated prosecutions to target many of the most outspoken advocates for evicted residents, including Xu Yonghai, a tenants’ rights activist in Beijing; and Zheng Enchong, a lawyer who advocated for the rights of evicted tenants in Shanghai. Xu, at the forefront of 2003 tenants’ rights protests in Beijing, was arrested in December and formally charged with revealing state secrets in February 2004. Police arrested Zheng in June and charged him, too with “circulating state secrets” because of faxes he sent to the New York-based organization Human Rights in China. Since Zheng’s imprisonment, lawyers and tenants report that fewer lawyers are willing to take on forced eviction cases.

Because most of the available information in Chinese media and on Internet bulletin boards deals with urban evictions, this paper focuses on problems in urban areas. In fact, urban evictions are just a small fragment of the whole picture.⁷ Demolition and eviction in China’s cities is part of a larger national context that includes dislocation of impoverished populations, especially of rural peoples in areas where land values are rising, and ethnic minorities in resource-rich areas.⁸ In some rural areas, land expropriation drives farmers to the cities to seek work. In other rural but urbanizing regions, populations may have to endure multiple rounds of demolition, relocation, and reconstruction, as areas “improved” once are torn down and “re-improved” two or three

memorials about political problems, Chu Yuan threw himself into a river and drowned. His suicide was seen as proof of his nobility, and the anniversary of his death on the fifth day of the fifth lunar month is a major Chinese holiday.

⁷ For further discussion of rural Chinese land expropriation, see reports and analysis of China’s land laws on the website of Rural Development Institute, www.rdiland.org.

⁸ For instance, there have been ongoing reports of protests and demonstrations by Inner Mongolians. China is in the process of relocating 200,000 Mongolian nomads from the grasslands in Inner Mongolia, and 800,000 in Qinghai. Human Rights Watch interview with Enhebatu Togocho, president, Southern Mongolia Human Rights Information Center, January 6, 2004.

more times in following years, profiting well-connected construction firms and the government offices that charge them fees.⁹ Residents of ethnic minority regions face even greater procedural problems than most urban residents, as they face linguistic barriers that make it difficult for them to obtain justice in Chinese-language courts.¹⁰

Many of the problems with demolition and eviction detailed here have been publicly acknowledged by high-ranking members of the central government, who are aware of the high level of public outrage—and the potential challenge to the Communist Party’s rule—percolating in rural and urban China. Even state-controlled media, such as the *People’s Daily*, have published articles and editorials openly critical of the state’s handling of these issues. Senior Chinese legal scholars have argued for reform of the system.

In December, Beijing announced some modifications of existing regulations and planned changes to the constitution that would signal the government’s concern about lack of housing rights. Such steps, while welcome, will bring only limited change without a thorough reform of the system that implements them. China’s displaced residents desperately need a reliable system through which to seek redress—so much that some are even willing to die for it.

⁹ This happened in at least two cases in Yunnan province. In Kunming, the capital of Yunnan, major traffic arteries were expanded and improved in 1997-98 as part of an urban development plan, only to be redone a year later for the Yunnan Flower Expo, a large exposition that was hoped would draw hundreds of thousands of international visitors but that failed to live up to expectations. In Jinghong, capital of Xishuangbanna Dai Autonomous Prefecture in southern Yunnan, streets and sewers were torn up and improved in 1998 in order to attract more domestic tourists, and were redone again two years later for the Flower Expo. Kunming now plans another complete reconstruction in which it will be transformed into four small cities connected by a superhighway (Human Rights Watch interview with Mary F. [pseudonym], architect, New York, January 12, 2004).

¹⁰ Human Rights Watch interview with Dao [pseudonym], ethnic minority community leader, Yunnan, December 2002. Where indicated, names and identifying characteristics of Chinese citizens and some international experts working in China interviewed for this report have been changed to protect interviewees against government retaliation.

II. FORCED EVICTIONS: THE SOURCE OF THE CONFLICTS

In the decades following China's 1949 revolution, all land was owned by the state and ownership could not be transferred to private individuals or companies. Individual citizens did not own private homes or work for private companies, but were required to live in apartments located within the compound of the government work unit where they were employed. Since the late 1980s, China's rapid shift toward a market economy, the increasing demand for private home ownership, and the need of local governments for revenue, have resulted in a thriving real estate market. This has been especially true in Beijing, where the upcoming 2008 Olympics has spurred accelerated demolition, eviction and construction in the city center and in surrounding suburbs.

Once a developer acquires a parcel of land, clearance of the site involves several actors:

- **Developers** who wish to build on a site must apply for and obtain a series of permits from demolition and eviction management departments.
- These **demolition and eviction management departments** in municipal governments process the applications for demolition permits, collect the necessary fees, and are responsible for the process of demolition and eviction.
- The developers, or the government departments acting on their behalf, are required by law to then approach the existing **residents** at each site, whether homeowner or tenants, to advise them of their eviction and negotiate compensation.
- Developers then subcontract a private **demolition company**, which specializes in the demolition and clearing of sites for construction – either with heavy

demolition equipment, or, more often, with unskilled contract laborers who demolish the building by hand.

According to the law, once all parties have signed a compensation agreement, the resident must relocate, either with the help of the demolition and eviction management office or by himself. The demolition and eviction management department can also arbitrate disputes between developers and residents over compensation, and may give developers approval to proceed with “forced demolition and eviction” (*qiangzhi chaiqian 强制拆迁*) if the resident flatly refuses to move. The law explicitly includes both homeowners and tenants.

Many national, provincial, and municipal regulations and policies cover the process of forced evictions, but these regulations are flawed, and often violated in practice. China’s *Regulations for the Management of Urban Residential Demolition and Eviction* specifies the procedures through which cities may evict residents.¹¹ In addition, most local legislatures have passed implementing regulations that generally copy the language of the national regulations with only minor modifications.¹²

The national regulations are divided into five sections: general rules, demolition and eviction management, compensation and resettlement, punishment regulations, and an addendum. The “general rules” section defines the term “evictor” as the work unit which obtains a demolition and eviction permit, and “evictee” as the owner or tenant of the property in question.

¹¹ *Chengshi fangwu chaiqian guanli tiaoli* [Regulations for management of urban residential demolition and eviction], published by the State Council on March 22, 1991, implemented November 1, 2001.

¹² Many Chinese provincial and municipal demolition and eviction regulations were available at <http://www.china.org.cn/chinese/zhuanti/dhcq/417973.htm>, between November 2003 and January 2004. As of January 29, 2004, the page was no longer accessible. Regulations surveyed for this report include those for the cities of Beijing, Chengdu, Nanjing, Shanghai, Guangzhou, and Dalian, as well as provincial regulations for Jiangsu, Zhejiang, Anhui, Inner Mongolia, Yunnan, Guangdong, and Liaoning. As the regulations tend to resemble each other and the national regulations, in most cases this report cites the national regulations.

The second section on management of demolition and eviction lists the permits required to initiate demolition, and the length of time required to process applications for permits. It stipulates that after demolition and eviction has been approved, property owners are not permitted to undertake new construction or improvements. It requires that the evictor sign a compensation and resettlement agreement with the property owner and any renters. After an evictee has signed such an agreement, if he or she subsequently refuses to move, the evictor may apply for arbitration, may sue the evictee, and may apply to the court for permission to implement eviction. If the evictee does not sign an agreement, she or he may also apply for arbitration and sue the evictor, but has no right to have eviction and demolition stopped while the lawsuit is being heard. If the evictee has not relocated during the arbitration or lawsuit process, the evictor can apply for government permission to proceed with forced eviction.

The third section of the regulations addresses compensation and resettlement, and lists the factors that should be weighed in determining the amount of compensation, as well as giving evictees the right to decide how their funds will be disbursed. The fourth section on punishment sets out general guidelines for setting fines in case of infraction of the regulations. A final addendum sets out dates of implementation of the law.

Even the limited rights protections contained in these regulations are often violated in practice. In many cases, tenants are given little or no notice of their evictions, are mired in arbitrations procedures handled by government officials with an interest in their eviction, never receive their promised compensation, and are denied justice in local courts. In the worst cases, some who refused to move have been injured and even killed during forced evictions.

Violent evictions

When developers and residents fail to reach a compensation agreement, regulations permit developers to apply for permission from the demolition and eviction department

to proceed with *qiangzhi chaiqian*, or forced eviction.¹³ This term, widely used in Chinese regulations, is defined nowhere, and methods of “forced eviction” vary. Some regulations specify that demolition and eviction companies should go through special training and be informed about relevant laws.¹⁴ Others say that developers may call in the police to evict residents.¹⁵ Some developers have reportedly tried other approaches, such as, in one case, arson; in another, local officials allegedly aided a developer by shouting “Earthquake!” outside a building in the middle of the night in order to make residents flee.¹⁶

There are many reports of unidentified men evicting residents in the middle of the night. Zhang, a Chinese immigrant in the United States whose friends were forcibly evicted from their home in a Beijing compound in 2003, spoke with them often by telephone during the period leading up to and after their eviction. Zhang described what his friends said happened to them:

It started in August. My friends lived on the ground floor of the building. You know in China, ordinary people can't own land. They got a circular saying that in one month, they had to move out. They felt [the compensation offer] was extremely unfair. There were plans to build a big shopping mall, even though the local zoning laws shouldn't permit such a big construction.

My friends just wanted appropriate compensation. In the beginning, [developers] tried to sway their hearts. They said, “if you move, you will

¹³ “Regulations for management of urban residential demolition and eviction,” art. 17.

¹⁴ *Dalianshi Chengshi fangwu chaiqian guanli banfa* [Methods for management of urban residential demolition and eviction in Dalian city], implemented November 1, 2001, art. 12.

¹⁵ “Methods for management of urban residential demolition and eviction in Dalian city,” art. 10.

¹⁶ Wen Xinwen, “*Tian xiaoming: ‘Tianqi’ yubao* [Daybreak over the fields: ‘Weather report’], www.peacehall.com/hot/chaiqian.html, December 11, 2003; “*Shaanxi bufen guanyuan wei dongyuan minzhong banqian jia chen dizhen yinfa konghuang* [In order to make people move, some Shaanxi officials falsely cry ‘Earthquake’ and start a panic],” www.boxun.com, November 6, 2003.

get good compensation.” Then after the meetings did not get anywhere, they turned to stronger methods. In the middle of the night, while they were sleeping, people came in and broke up the courtyard wall. There were lots of people living there together in this building, they had a shop, it was really dangerous, there were still people living there.

[My friends] called the emergency number the moment it happened, and the police came to investigate. But the police said, “Well, this kind of thing...”—they wouldn’t deal with it. Then the water was cut off. Eventually [my friends] moved out, they moved in with their friends. It was cold, they could have frozen to death. They were suffering, their parents were elderly, and the parents were getting ill.

The residents didn’t believe at first that something like this could happen. I tried to warn them, when I spoke to them on the phone, but they said, “no problem, no problem”—they didn’t believe me. Now they believe me! But no one cares, the government doesn’t care.¹⁷

Zhang reported that after the jailing of Shanghai lawyer Zheng Enchong, his friends feared that their international phone calls were being monitored by the government, and asked him to stop calling them.

Others in Beijing, Nanjing city, and Suzhou province have told the Chinese media that developers hired heavy equipment, usually bulldozers, to destroy homes in the middle of the night while residents were asleep inside.¹⁸ A Beijing resident reported that his home

¹⁷ Human Rights Watch telephone interview with Zhang [pseudonym], January 22, 2004.

¹⁸ Zhu Zhongxun, “Suzhou yili chaiqian “dingfeng zuoan” shimin shenye zao yeman bangjia [Suzhou forced evictee brutally kidnapped in middle of night],” *Jiangnan shibao*[Jiangnan Times], December 12, 2003, news.sina.com.cn/c/2003-12-12/06531321126s.shtml; Anonymous post by Nanjing resident, “Nanjing qiangzhi chaiqian, zai si yi ren! [Nanjing forced eviction kills another person!],” November 1, 2003, www.boxun.com; “Beijing heibang yili chaiqian an fan bei pu [Beijing criminal charged for violent eviction], *Ming Bao*, re-posted on www.boxun.com, October 30, 2003.

was bulldozed with possessions still inside, even while he was still arguing in the courts about the size of the house as the basis for compensation.¹⁹

There are a number of reports of threats and assaults by employees of demolition companies against residents who refuse to move. In Tianjin, residents alleged on an Internet bulletin board that they were forcibly evicted by employees of the Tianjin city Beautiful East Residential Property Development Company, who rampaged through the half-deserted building, stealing and using property of residents who were in the process of moving out.²⁰ Others have reported that they were verbally threatened or physically attacked.²¹ There have been unconfirmed media reports of residents being crushed to death by bulldozers during forced demolition and eviction.²² The Tianjin evictee alleged that after residents were beaten by employees of the demolition and eviction company, police refused to investigate.²³

Some residents report that these violent evictions occur without warning. More often, the final, violent confrontation between demolition crews and residents occur after prolonged, months-long disputes among residents, developers, and the city's demolition and eviction management department over how plans are made and what the amount of compensation will be; and after arbitration and legal remedies have failed to satisfy residents.

¹⁹ Wang Xiaoxia, "Baoli chaiqian anli diaocha [Investigation of violent demolition and eviction cases]," *China Economic Times*, November 19, 2003.

²⁰ Posted by "Rights of the Masses are No Small Matter", "Fanying Tianjinshi Hedongchude yeman chaiqian wenti [Report of savage eviction problem in Hedong district, Tianjin city]," posted on *Beijing Entertainment News* bulletin board, www.stardaily.com.cn/liuyan/guestbook.asp?Page=4, December 12, 2003.

²¹ Xie Guangfei, Chen Xiaofeng, "Chaiqian yeman xing diaocha [Investigation of the savage nature of demolition and eviction]," *China Economic Times*, November 5, 2003).

²² Xie Guangfei, Chen Xiaofeng, "Investigation of the savage nature...;" "Bei yanmi fengsuo de xiaoxi: Nanjing dengfuxiang chaiqianhu Weng Biao zifen zhihou, you you liangren cansi zai chaiqian er zi zhixia [Highly classified news: Two more people die in tragic demolition and eviction after Nanjing evictee Weng Biao's self-immolation]," www.boxun.com.

²³ "Rights of the Masses are No Small Matter", www.stardaily.com.cn/liuyan/guestbook.asp?Page=4.

Lack of consultation and information

One of the main sources of conflict arising during forced evictions is that residents often find out about the demolition of their residence a few days before the government expects them to move. A survey of Chinese laws and regulations on demolition and eviction shows that while some require demolition to be planned in accordance with existing plans (for example, in accordance with plans to preserve historic city areas, to protect the environment, or to develop the city), none require consultation with local residents.²⁴ Even vast resettlement and construction projects can be planned in the absence of any community consultation. There are no requirements in Chinese law that residents be consulted or notified about such a project.

Construction projects are often implemented and residents evicted with little or no advance notice. In some extreme cases, residents return home from work to find the character *chai* (demolish) written on the walls of their houses, or even come home to find their house already demolished.²⁵ Demolition and eviction regulations do contain strict requirements in terms of the permits and approvals developers must obtain from local authorities, and the time limits within which those should be applied for and issued.²⁶ However, there are generally few or no requirements for advance notice to evictees. Some regulations require that the developer inform residents within five days of receiving government approval of demolition plans, and others require detailed

²⁴ See, e.g., *Liaoning sheng Chengshi fangwu chaiqian guanli banfa* [Methods for the management of urban residential demolition and eviction in Liaoning province], September 29, 2002, art. 3; *Nei Menggu Chengshi fangwu chaiqian guanli banfa* [Methods for the management of urban residential demolition and eviction in Inner Mongolia], December 3, 2003, art. 3; *Chengdushi Chengshi fangwu chaiqian guanli zhixing banfa* [Methods for the implementation of the management of urban residential demolition and eviction in Chengdu city], November 1, 2001, art. 3.

²⁵ You Shan, "Shangfang wuxiao: Qingdao chaiqianhu Zhongnanhai jingzuo hangyi [Petitioning brings no response: Qingdao evictees stage peaceful sit-in protest at Zhongnanhai]," Radio Free Asia, November 21, 2003.

²⁶ "Requirements for the management of urban residential demolition and eviction." Article 8 of the regulations states: "Residential demolition and eviction management departments and the demolishers should properly disseminate and explain [the project] to the residents in a timely manner."

information be given to residents, but they do not specify how far in advance of the demolition notice should be provided.²⁷

Some residents allege that the information they receive regarding their eviction is intentionally misleading. According to an article in *Nanfang zhoumo* [Southern Weekend], residents in Jinhua city, Zhejiang, said authorities claimed in a demolition notice that they were being relocated to make way for a “green belt.” Authorities used this reason to justify low compensation for the eviction and the refusal of residents’ request that they be resettled in the same neighborhood. Evictees say they later learned that authorities were in fact building high-end private apartment blocks.²⁸

Disputes over compensation

Disputes between developers and residents often arise over low rates of compensation and poor resettlement options. Once they learn that their home will be demolished, residents generally have little option to prevent it, and instead attempt to negotiate with the development company over the amount of compensation. According to the national demolition regulations, developers must pay evictees compensation equal to the full market value of their properties,²⁹ with an added (although unspecified) amount of compensation for business loss in the case of non-residential properties.³⁰ Reporters have noted that in some cases developers pay compensation to the local authorities instead of to evictees.³¹ Some residents have alleged that municipal demolition and

²⁷ “Methods for the implementation of the management of urban residential demolition and eviction in Chengdu city,” art. 9; “Methods for management of urban residential demolition and eviction in Dalian city,” art. 15.

²⁸ Cheng Gong, “*Zhi chaiqian zhi tong* (Treat the pains of demolition and eviction),” *Southern Weekend*, December 31, 2003.

²⁹ “The sum of the compensation money will be determined based on the location, use, construction area and other factors, and by using the appraised real estate market price of the demolished home.” *Chengshi fangwu chaiqian guanli tiaoli*, art. 24.

³⁰ “In cases where demolition and eviction of non-residential property results in a cessation of production or business, the evictor should give suitable compensation.” “Regulations for the management of urban residential demolition and eviction,” art. 33.

³¹ “*Jidian pingxi: Ying jiaqiang zhengdi buchangde zhengci yanjiu* [Analysis: Compensation by requisitioning locations should undergo stronger policy study],” *Nongmin ribao* [Peasants’ Daily], September 15, 2003.

eviction management departments have embezzled compensations funds: in one case, a banker alleged that the developer put 8 million yuan into a demolition and eviction compensation fund managed by the municipal department. According to this allegation, the management office unilaterally lowered the amount of compensation paid to residents, and kept the remaining 960,000 yuan (about U.S.\$116,000) for the departments' own use, later investing this money in a commercial real estate project.³²

Regardless of the regulations, Chinese experts also report that the amount of compensation may in some instances be unilaterally decided by the developers or the demolition companies. It may be set far below market value, with little or no account taken for loss of income in the case of properties used for family businesses.³³

Sometimes the promised compensation is only partly paid or not paid at all.³⁴ Kong, the son of a Beijing couple who were forcibly evicted, reported to Human Rights Watch that developers had been approaching his parents about demolishing their home for a year, but had been unable to convince them to sign a compensation agreement. Then, suddenly,

the demolition and eviction management department came to say they had only two days to move before forced demolition. The government department did not approach them and offer an agreement.... [My parents] didn't get anything [as compensation], and they had no help with resettlement.³⁵

³² Wang Xiaoxia, "Chaiqian buchangkuan bei qintun nei mu [Demolition and eviction compensation funds embezzled behind the scenes]," *China Economic Times*, September 24, 2003.

³³ Wang Xiaoxia, "Chaiqian cheng raomin gongcheng, Zhuanjia jianyi tigao buchang biao zhun" [Chaiqian has become the harassment to people, Experts suggest raising the compensation standard], *China Economic Times*, November 12, 2003.

³⁴ Song Zhenyuan, Zhou Guohong, Cui Lijin, "Chaiqian zhi tong, tong che minxin [The pain of demolition and eviction severely hurts the people]," New China News Agency, November 13, 2003.

³⁵ Human Rights Watch telephone interview with Kong [pseudonym], December 10, 2003.

Chinese government-run media reports have also raised concerns that, as property values rise in downtown areas and evicted residents receive compensation below market value, evictees may be unable to afford property in the area where they had been living, and may be forced to resettle in the developing suburbs where employment is difficult to find.³⁶

Arbitration and judicial remedies

At the heart of many residents' complaints about the demolition and eviction process is frustration with the lack of meaningful redress. Arbitration and legal remedies, when available, are poorly implemented, and are often rife with official corruption. As Ji, a Chinese lawyer with experience defending the rights of residents in forced eviction cases, explained to Human Rights Watch: "There are two reasons for demolition and eviction: national development and individual benefit. Big corruption is a serious cause behind demolition and eviction problems."³⁷

Chinese regulations specify that in cases where residents and developers are unable to reach an agreement on compensation for the demolished home, residents may seek arbitration by the municipal demolition and eviction management department or bring a lawsuit against the developer.³⁸ In practice, the arbitration system appears to be deeply flawed. Many city demolition and eviction departments are said to have conflicts of interest that would make it difficult for them to render a fair decision in a hearing between developers and residents. First, while demolition regulations forbid local

³⁶ A typical evictee in Nanjing complained that she couldn't find work in the desolate resettlement area and could not afford to travel into town to work (Song Zhenyuan et. al., "The pain of demolition and eviction severely hurts the people.").

³⁷ Human Rights Watch interview with Ji [pseudonym], lawyer, November 11, 2003.

³⁸ "In cases where evictors and evictees, or evictors, evictees and tenants who have still not reached an agreement on demolition and eviction compensation and eviction; then persons involved in the matter may apply to the residential demolition and eviction management department for arbitration." "Regulations for the management of urban residential demolition and eviction," art. 16.

demolition and eviction departments to carry out demolition and eviction themselves,³⁹ such departments often have close connections with the companies that do the work. In these cases, authorities have little incentive to find in favor of residents trying to block demolition or to crack down on breaches of regulations by their own companies.

In addition, there have been allegations of corruption and improper financial interests within the administration of demolition and eviction. An evictee in Hunan province posted a letter on the Internet complaining that he was refused the right to negotiate compensation for his home by the demolition company. The legal representative of the company, it turned out, was both the city's deputy mayor and the director of the city's construction bureau.⁴⁰ As the *China Economic Times* observed, local authorities profit from fees associated with the issuance of permits to developers, who then also are likely to choose to hire demolition companies with official connections in order to conduct forced evictions.⁴¹

All these problems lead many who have sought and failed to find redress in the arbitration system to take their cases to court. However, those who do so, and who are able to find and afford a qualified lawyer to represent them, are likely to encounter familiar conflicts of interest in the court system. Chinese legal experts say that many courts refuse to hear cases brought by evicted urban residents.⁴² One resident told Human Rights Watch that even when the municipal department has clearly not followed procedures spelled out in the regulations, such as obtaining a relocation agreement signed by developer and resident, the court may still find against the resident.⁴³ Political

³⁹ "Residential demolition and eviction management departments may not act as demolishers and evictors, and may not be entrusted with demolition and eviction." "Regulations for the management of urban residential demolition and eviction," art. 10.

⁴⁰ Letter posted on the site of real estate lawyer Qin Bing, "*Qin lushi, nihao! Women shi Liuyangde bei chaiqian hu* [Hello, Lawyer Qin, we are evictees in Liuyang]," posted November 29, 2003, <http://www.qinbing.com/article.asp?articleid=5253>.

⁴¹ Zhang Fan, "*Chaiqian jufen beihou you zhongda falu wenti* [Serious legal questions in the background of demolition and eviction conflicts]," *China Economic Times*, October 22, 2003.

⁴² Prof. Cheng Jie, public presentation at Columbia University, November 13, 2003; Human Rights Watch interview with Yi [pseudonym, lawyer, New York, November 11, 2003].

⁴³ Human Rights Watch telephone interview with Kong [pseudonym], December 20, 2003.

interests may intercede: China's judicial structure permits local Communist Party committees to decide which cases are and are not heard by courts. In some demolition and eviction cases where there are strong official interests, Party committees may instruct judges to refuse to hear the cases.⁴⁴ In others, courts simply tell plaintiffs that demolition and eviction cases are "outside of their area of responsibility."⁴⁵

In the wake of the jailing and conviction of Shanghai lawyer and tenants' rights advocate Zheng Enchong, some residents and lawyers told Human Rights Watch that lawyers are afraid to take forced eviction cases. "My friends [who were evicted in Beijing] wanted to find policies and laws that would help them, but the police investigated and failed to find any. So they found a lawyer willing to take their case, but after Zheng Enchong, the lawyer wouldn't dare to [represent them]," said Zhang, the friend of a Beijing family who were forcibly evicted from their home.⁴⁶ Two other Chinese legal experts on demolition and eviction who spoke with Human Rights Watch on condition of anonymity after the Zheng Enchong trial expressed similar fears. One was careful to stress that unlike Zheng, he was only sharing information with Human Rights Watch that had already been published in officially approved news sources.

Should a plaintiff triumph over this system and win the case, his home is already likely to have been demolished, because China's regulations render the judicial process irrelevant. All the national and local regulations surveyed for this report permit forced demolition to proceed even before lawsuits have been decided; that is, one cannot get a judicial injunction blocking the demolition pending resolution of the case. For instance, the national regulations state that "during a lawsuit, the implementation of demolition and eviction will not be stopped."⁴⁷ Two Beijing residents reported that the demolition department ordered the demolition of their homes, even though the local court had only authorized one of the demolitions. Both houses were destroyed anyway, and when

⁴⁴ Human Rights Watch interview with Yi [pseudonym], lawyer, New York, November 11, 2003.

⁴⁵ Prof. Cheng Jie, public presentation at Columbia University, November 13, 2003.

⁴⁶ Human Rights Watch telephone interview with Zhang [pseudonym], January 22, 2004.

⁴⁷ "Regulations for the management of urban residential demolition and eviction," art. 16.

residents protested, they were detained by police. Both later alleged they had been physically abused by the police.⁴⁸

International law

China has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 of the ICESCR guarantees “the right of everyone to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions.”⁴⁹ The problem of forced evictions figures prominently in international debate on adequate housing. In 1991 the U.N. Committee on Economic Social, and Cultural Rights, which is entrusted with authoritatively interpreting the ICESCR, stated that “forced evictions are prima facie incompatible with the requirements of the covenant.”⁵⁰ Likewise the U.N. Commission on Human Rights in 1993 concluded that “forced evictions are a gross violation of human rights.”⁵¹

International law does allow for government exercise of eminent domain under appropriate circumstances. The term “forced evictions” has been defined by the U.N. Committee on Economic, Cultural and Social Rights “as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not,

⁴⁸ Wang Xiaoxia, “*Baoli chaiqian anli diaocha* [Investigation of violent demolition and eviction cases],” *China Economic Times*, November 19, 2003.

⁴⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Sup. (No. 16) at 49, U.N. Doc. A/6316 (1996), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 11. China ratified the ICESCR on June 27, 2001. Chinese translations of the ICESCR are available from Human Rights Watch at <http://www.hrw.org/chinese/un/iccr.html> and from the Hong Kong Human Rights Monitor at <http://www.hkhrm.org.hk/database/1c1.html>. Both sites are usually blocked in mainland China.

⁵⁰ U.N. Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Art. 11 (1) of the Covenant) (1991).

⁵¹ U.N. Commission on Human Rights, Resolution 1993/77, para. 1. See also U.N. Sub-Commission on the Protection and Promotion of Human Rights, Resolution 1998/9 on Forced Evictions, E/CN.4/SUB.2/RES/1998/9 (Aug. 20, 1998).

however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.⁵²

The Committee addressed the issue of forced evictions in its General Comment 7.⁵³ According to the Committee, all persons should possess a degree of security in their home, which should include legal protection against forced eviction.⁵⁴ The Committee noted that forced eviction is frequently justified “in the name of development,” and is carried out for such purposes as urban renewal, housing renovation, and city beautification programs, or for holding major sporting events like the Olympic Games.⁵⁵

Forced eviction, except where justified,⁵⁶ not only violates the right to adequate housing, but may also result in violations of other rights, such the rights to security of the person and to one’s home.⁵⁷ According to the Office of the High Commissioner for Human Rights in its examination of forced evictions in an international human rights framework:

While the right to adequate housing is perhaps the most obvious human right violated by forced evictions, a number of other rights are also affected. The rights to freedom of movement and to choose one's residence, recognized in many international laws and national

⁵² Committee on Economic, Social and Cultural Rights, General Comment 7, “The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions,” U.N. Doc. E/C.12/1997/4 (1997).

⁵³ U.N. Committee on Economic, Social and Cultural Rights, General Comment 7, The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions, U.N. Doc. E/C.12/1997/4 (1997).

⁵⁴ General Comment 7, para. 1.

⁵⁵ General Comment 7, para. 8.

⁵⁶ According to General Comment 7, para. 12:

Where some evictions may be justifiable, such as in the case of the persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that those evictions are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

According to paragraph 15, “In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.”

⁵⁷ General Comment 7, paras. 5 & 9. See International Covenant on Civil and Political Rights, arts. 9 & 17.

constitutions, are infringed when forced evictions occur. The right to security of the person, also widely established, means little in practical terms when people are forcibly evicted with violence, bulldozers and intimidation. Direct governmental harassment, arrests or even killings of community leaders opposing forced evictions are common and violate the rights to life, to freedom of expression and to join organizations of one's choice. In the majority of eviction cases, crucial rights to information and popular participation are also denied.⁵⁸

The Economic, Social and Cultural Rights Committee considers legislation against forced evictions to be essential for building a system of effective protection. Such laws should include measures that “provide the greatest possible security of tenure to occupiers of houses and land,” and which are “designed to control strictly the circumstances under which evictions may be carried out.”⁵⁹ States must ensure that their laws are adequate to prevent and, if appropriate, punish forced evictions carried out by private persons without appropriate safeguards. Existing laws and regulations that are incompatible with the right to adequate housing should be amended or repealed.⁶⁰

The Committee also has urged states to ensure that, prior to any evictions, particularly those involving large groups, all feasible alternatives are explored in consultation with affected persons, with a view to avoiding, or at least minimizing, the use of force. Those facing eviction orders must have legal remedies available. And states should see to it that those evicted have a right to adequate compensation for any property affected.⁶¹

Finally, the Committee found that because forced evictions may infringe on a large number of rights, appropriate procedural protection and due process is “especially

⁵⁸ U.N. High Commissioner for Human Rights, Fact Sheet no. 25, “Forced Evictions and Human Rights,” 1996 (available at <http://www.unhchr.ch/html/menu6/2/fs25.htm>).

⁵⁹ General Comment 7, para. 10.

⁶⁰ *Ibid.*, para. 10.

⁶¹ *Ibid.*, para. 14.

pertinent.”⁶² The procedural protections that should be applied include: genuine consultation with those affected; adequate and reasonable notice of the date of eviction; timely information on the proposed evictions and the alternative purpose for which the land is to be used; the presence of government officials at evictions affecting groups of people; proper identification of those carrying out the eviction; and the availability of legal remedies for those affected and access to legal aid. Some of the procedural protections required by the ICESCR are missing from Chinese national and local regulations, and most of these protections seem absent in practice.

Chinese government harassment of the tenant’s rights movement, including the arbitrary arrest and detention of tenant’s rights advocates, infringes upon the rights to freedom of expression, peaceful assembly, and association. These fundamental rights are enshrined in the Universal Declaration of Human Rights⁶³ and the International Covenant on Civil and Political Rights (ICCPR),⁶⁴ as well as other international treaties and documents.⁶⁵ China, which has signed but not yet ratified the ICCPR, is obliged pending ratification to refrain from acts which would defeat the object and purpose of the covenant prior to its ratification.⁶⁶

⁶² *Ibid.*, para. 16.

⁶³ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71, (1948), arts. 19, 20.

⁶⁴ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

⁶⁵ See, e.g., Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996).

⁶⁶ Vienna Convention on the Law of Treaties, concluded May 23, 1969, U.N. Doc. A/CONF.39/28, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980), art. 18.

III. THE TENANTS' RIGHTS MOVEMENT

A survey of Chinese news and Internet bulletin boards strongly suggests that protests over demolition and eviction practices have escalated in intensity and number in the past year. Chinese authorities are willing to tolerate dissent by anonymous writers on the Internet, and some open criticism by editorial writers and journalists. But the authorities suppress protests by evicted residents, and have jailed two of the country's most prominent tenants' rights advocates. Some protests have included residents who were evicted to make way for construction for the 2008 Beijing Olympics.

When unhappy with the decisions of local authorities, many Chinese residents opt to *shangfang* (上访) or petition the provincial or national government bureaus that oversee them, by traveling to the government office and handing in open letters that request an investigation. According to the national Ministry of Construction, of 1,730 petitions filed from January to August 2003, about 70 percent were about problems with forced evictions.⁶⁷ According to official statistics, there were 50 percent more petitions about forced eviction complaints in August 2003 than in August 2002.⁶⁸ In some cases, tenants' rights advocates organized petitions signed by large numbers of people. In the first such case in 2000, over 10,000 petitioners filed a civil suit against demolition and eviction at the Intermediate People's Court in Beijing.⁶⁹ On February 26, 2003, nearly 22,000 Beijing residents signed an open letter to President Hu Jintao and senior government officials.⁷⁰

⁶⁷ Zhao Ling, "Bude bu zhongshide wenti [A problem that merits serious attention]," *Nanfang Zhoumo*, September 4, 2003.

⁶⁸ "New China Attention Point," New China News Agency, posted on www.boxun.com November 12, 2003.

⁶⁹ Zhao Ling, "A problem that merits serious attention."

⁷⁰ Xiao Chuan, "Zhengfu zongrong zhi chaiqian maodun jihua: Minen yi jiduan fangshi xuanxie [Government conniving leads to escalating demolition and eviction conflicts: Popular resentment uses extreme measures to spread the word]," *Dajiyuan* [Epoch Times], posted on www.boxun.com, November 26, 2003.

Thousands of people have taken their protests to the Internet, posting anonymous letters and complaints on electronic mail and bulletin boards, and circulating gruesome reports of violent evictions. In contrast to China's strict control of dissent on other issues, many of these tenants' protests were uncensored, and the criticism quickly built up steam. One typical writer said:

Recently, demolition problems have seriously influenced social stability on the mainland, because in the process of demolition, local governments take advantage of their administrative powers to engage in tyrannical business, without regard for the rights of evictees.... Don't demolish the foundation of the republic through demolition and eviction.⁷¹

Others posted public protest letters about specific incidents.⁷² In November, over 1,200 Beijing residents signed a petition on the Internet in support of farmer-protester Ye Guoqiang, who had jumped from a Beijing bridge to protest his eviction for construction related to the 2008 Olympics.⁷³

In September, the New China News Agency invited a public debate, asking "Between city construction and evictees, whose rights are more important? Should we change our thinking?" Most responses tended to favor the rights of evictees:

⁷¹ Anonymous, "The demolition of paths and roads will lead farmers to a dead end where they must fight on all fronts," October 17, 2003, posted on comment.sina.com.cn; no longer accessible as of February 4, 2004.

⁷² "Sichuan Dazhou Tongchuan chu fangzhi chaiqian qi fengbo [Demolition and eviction causes disturbance in Tongchuan district, Dazhou, Sichuan]," www.peacehall.com/news/gb/yuanqing/2003/09/200309160611.shtml, September 15, 2003.

⁷³ "Beijing 1204 ren qianming shengming Zhongguo zhengfu zai Ye Guoqiang zisha yi an niezao yaoyan [1204 Beijing people sign statement on fabrication of rumors by Chinese government in Ye Guoqiang case]," posted on www.boxun.com, November 29, 2003.

The main problem is that some local governments have not put the rights of ordinary people in a high enough position. [signed] *Shanipate123*⁷⁴

National rights and communal rights should be built on the basis of the proper protection of individual rights. [signed] *Patriotism and anxious sorrow without end*⁷⁵

Some of China's more independent media have raised the problem as well. In a widely cited article in *Southern Weekend*, "The decade-long drama of demolition and eviction," author Zhao Ling listed four key problems: lack of rights for evictees, lack of any organized system for resettlement, generally low compensation, and difficulties in obtaining legal redress.⁷⁶ The *Beijing Entertainment News* cited as problems the use of force to evict residents, low rates of compensation, frequent reversals and changes in government construction plans, and loss of livelihood for many who run small enterprises out of their homes.⁷⁷

Even the state-controlled *People's Daily* weighed in with an editorial analyzing conflict between the demolition regulations and national laws that prohibit the reallocation of property, and between the regulations and the constitution, which protects property rights. The *People's Daily* criticized the administration of justice, quoting a legal scholar on the importance of judicial reform, and commenting:

⁷⁴"*Qiangxing chaiqian, ni zai yu shei zhengli* [Forced demolition and eviction, who are you struggling to benefit?]" New China News Agency, September 16, 2003.

⁷⁵"Forced demolition and eviction..." New China News Agency.

⁷⁶ Zhao Ling, "*Chaiqian shi nian beixiju* [The decade-long drama of demolition and eviction]," *Southern Weekend*, September 4, 2003.

⁷⁷ Su Guanming, "*Yin chai zhi pin wenti rijian tuchu: chaiqian chongtu chengwei xinfang jidian* [Problem of demolition leading to poverty gradually emerges: demolition and eviction conflicts become focus of petitions]," *Beijing Entertainment News*, November 13, 2003.

It is impossible to deny that some judicial organs have changed from judging benefits on the basis of the social trust into tools for the use of guarding benefits for [those in] power.⁷⁸

In other cases, major media outlets like the *China Economic Times* suffered from censorship by local authorities. The *China Economic Times* reported that Shanghai authorities had blocked *China Economic Times* reports about forced evictions in the city, citing the national state secrets law. While acknowledging the sensitivity of the problem, the *China Economic Times* quoted from article two of China's State Secrets Law to observe that the law applies to "[s]ecret matters in national construction and military force." "One can say," the *Times* continued,

that the majority of demolition and eviction is marketized, and is not a secret matter pertaining to national construction, the national economy and the development of society. Moreover, some developers and civic organs would like to call urban reconstruction and residential development programs "national construction," when it is for their own purposes and has no relationship with "state secrecy."

Secondly, to say that the external publication of the facts relating to demolition and eviction problems could harm the stability of the nation's political power, the unity of China's nationalities, and the stability of society makes even less sense. In fact, it is precisely the intervention of civil authorities, their defiance of the law, and their wanton use of forced eviction that are subverting the constitution and

⁷⁸ Wang Hongru, "Chaiqian mianzi falu kunhuo [Demolition and eviction faces legal conundrum]," *Renmin ribao*, October 21, 2003.

the national rule of law, and undermining the long-term peace of society.⁷⁹

However, while critical essays and anonymous protests on Internet bulletin boards were often tolerated, protests on the streets were ruthlessly suppressed. According to official statistics (which in similar instances often underreport the incidents), there were 1,500 violent incidents, suicide protests, and demonstrations related to demolition in 2003 as of November. From September to December 2003, Beijing saw almost daily protests in Tiananmen Square and in front of the Zhongnanhai compound against demolition and eviction.⁸⁰ Authorities jailed many protesters and attempted to block and prevent protests by closing off streets.

The following is a chronological summary of crackdowns on protests relating to demolition and eviction in 2003. While these reports come from generally reliable news sources, Human Rights Watch could not confirm these incidents due to Chinese government restrictions on monitoring of human rights abuses.

There were sporadic reports of tenants' rights protests and conflicts in the first half of 2003. In May, a woman of sixty-plus climbed on top of a bus and stripped naked to protest her forced eviction in Shenyang, Liaoning. The woman was carried away by police.⁸¹

In July, Beijing police blocked off streets around Zhongnanhai, the central government compound, to prevent a demonstration by evictees over low compensation. They also

⁷⁹ "Meiti puguang Shanghai chiqian bei fengsha, you ren chen baodao chiqian ju xiemi [Media's exposure of Shanghai demolition and eviction censored, some name the reporting of eviction and eviction 'divulging secrets']," China Economic Times, November 26, 2003.

⁸⁰ Michael Jen-siu, "Activist's untiring search for justice," *South China Morning Post*, July 8, 2003; Radio Free Asia, "Shangfang wuxiao: Qingdao chiqianhu Zhongnanhai jingzuo hangyi [No results from petitioning: Qingdao evictees protest with a peaceful sit-in at Zhongnanhai]," November 21, 2003.

⁸¹ An Zhiyong, "Embarassed elderly woman strips naked to confront law enforcement at demolition and eviction site," *Guangzhou ribao* [Guangzhou Daily], May 27, 2003.

questioned Guan Zengli, a housing rights organizer, who had earlier organized a protest of about fifty people in front of the Ministry of Land and Resources.⁸² In August, a group of roughly 300 rural people went to Xi'an in Shaanxi to protest at provincial government offices, claiming the project for which they were being evicted lacked government approval and that project officials were giving inadequate compensation.⁸³

On October 1, National Day, as already noted above, Ye Guoqiang jumped from Beijing's Jinshui Bridge in a suicide attempt to protest his forced eviction and the related beating of his father. Ye survived the attempt and was jailed for illegally demonstrating. Over 1000 people signed a petition calling for his release. In Beijing, seven protesters were charged with causing social unrest in late October 2003, and three others were detained, including Ye Guoqiang's elder brother and nephew.⁸⁴ Liu Anjun was detained in late October for causing social unrest when he marched in Tiananmen Square, alleging that his beating by a demolition company caused a heart attack.⁸⁵

Also in October, rural Guangdong protester Sun Zhicai died during an anti-demolition protest in which five others were arrested. According to reports, Sun was one of a group of farmers who tried to block bulldozers, and was pushed into a pond by police. He died of a heart attack several hours later.⁸⁶ Police charged Lau Shucan, Su Zhiquan, and Gu Jinai with inciting local people to stop government work. At their trial on December 17, Lau Shucan charged that he had been abused by police and forced to sign a false confession. Family members said that their lawyer was prevented from cross-examining witnesses in the trial.⁸⁷

⁸² Michael Jen-siu, "Police foil protest at leaders' compound," *South China Morning Post*, July 2, 2003.

⁸³ "Xi'an yue 300 ming nongmin bu man chaiqian, shengwei shiwei hangyi [About 300 Xi'an residents dissatisfied with chaiqian march and protest at provincial offices]," Radio Free Asia, August 21, 2003.

⁸⁴ Wang Manna, "Sanming Beijing chaiqianhu ye bei xingshi juliu mianze qisu" [Three Beijing evictees also in criminal detention, facing indictment]," Central News Agency, October 30, 2003.

⁸⁵ Wang Manna, "Three Beijing evictees..."

⁸⁶ "Chinese protester dies over land dispute," Radio Free Asia, October 29, 2003.

⁸⁷ "Farmer says Guangdong authorities forced him to confess in land trial," Radio Free Asia, December 24, 2003.

More protests were reported in November. There were several reports of a protest by twenty to thirty residents at a forced eviction site in Shenyang, with allegations that persons carrying out the forced evictions beat protesters and used a bulldozer to demolish their homes; some participants in a protest of over a hundred on November 11 were reportedly beaten by police.⁸⁸ On November 20, a group of about forty protesters from Qingdao city in Shandong organized a peaceful sit-in in front of Zhongnanhai, the central government compound. The protesters aimed to draw attention to the demolition of their homes without advance notice or compensation contracts, but were all taken away by police.⁸⁹ There were reports that same month that thirteen farmers in Shandong province had received sentences of up to four years for protesting government land seizures and the demolishing of their homes. According to police, the protesters were arrested because they used tractors to block the gates of the government compounds and fought the police.⁹⁰

In early December, tenants' rights activist Xu Yonghai was detained in Xiaoshan, Zhejiang province. Xu, a forty-two-year-old Protestant doctor and longtime leader of China's underground house church movement, had been advocating on behalf of jailed Christian leader Liu Fengguang. Liu was arrested in October in Hangzhou, where he reportedly went to investigate the demolition of an underground house church. He was charged with circulating state secrets.⁹¹

⁸⁸ "Shenyang yeman chiqian: Jumin zao paoda jiachan belli zai feixu [Savage demolition and eviction in Shenyang: Residents encounter beatings, property left in ruins]," www.sina.com, November 12, 2003; Boxun, "Shenyangshi zaici fasheng yeman chiqian xingwei [More savage demolition and eviction behavior takes place in Shenyang city]," www.boxun.com, November 14, 2003.

⁸⁹ "Shangfang wuxiao: Qingdao chiqianhu Zhongnanhai jingzuo hangyi [No results from petitioning: Qingdao evictees protest with a peaceful sit-in at Zhongnanhai]," Radio Free Asia Chinese service, November 21, 2003; Boxun, "Hangyi chiqian shiweizhe zai Zhongnanhaiwai zao jubu [Demonstrators protesting demolishing and eviction encounter arrest outside Zhongnanhai]," www.boxun.com, November 21, 2003.

⁹⁰ "Chinese villagers sentenced for rioting over government land grab," AFP, November 7, 2003.

⁹¹ "Activist Liu Fengguang detained," Human Rights in China, October 17, 2003.

Xu was at the forefront of Beijing's tenants' rights movement, participating in demonstrations and giving interviews to the media.⁹² The advocate also circulated open letters to the government calling for reform of demolition regulations. In an interview with Australian Broadcasting Corporation, he described the demolition of his home:

They forcibly demolished my home when there was no one at home. When we returned home, my home was gone. My home was flattened, and turned into ruins. We did not know where our belongings were....For a certain period, we set up a tent on the ruins for us to live in. But we were not allowed to live in that tent. My mum suffered from all of this and she passed away on October 13th.... Lots of people put themselves on fire because of demolition; some of them committed suicide because of demolition; some of them took the so-called radical action because of demolition. I can understand them all.⁹³

On October 1, 2003, Xu and Hua Huiqi were put under house arrest as part of a broader crackdown on dissidents on National Day.⁹⁴ Xu was released from house arrest, only to be arrested again a few weeks later.⁹⁵ In February 2004, he was formally charged with revealing state secrets.⁹⁶ His wife, Li Shanna, was put under police surveillance as part of a broader crackdown in the weeks leading up to the National Party Congress in March 2004.⁹⁷

⁹² Human Rights Watch interview with Bob Fu, China Aid Association, December 10, 2003.

⁹³ John Taylor, "China real estate boom: People forced to leave their homes," ABC Online, www.abc.net.au/correspondents/content/2003/x989831.htm, November 16, 2003. The arrest was not a first for Xu. In January 2000, police detained Xu for several days with Liu Fengguang, He Depu and two others after a religious meeting to celebrate the New Year. Associated Press, "China rounds up dissidents," January 1, 2000. Subsequently Xu said that he was abused by police. CNN, "China blasts U.S. plan for human rights censure," January 12, 2000.

⁹⁴ "Crackdown on dissidents for National Day," Human Rights in China, October 2, 2003.

⁹⁵ Human Rights Watch interview with Bob Fu, China Aid Association, December 10, 2003.

⁹⁶ "House Church Leaders Charged," Human Rights in China, February 24, 2004.

⁹⁷ "Crackdown on Activists Prior to NPC Meeting," Human Rights in China, February 26, 2004.

Reports of violence at protests continued in December. A train killed four protesters in Henan province who blocked the train tracks protesting the demolition of their homes. According to media reports, police were attempting to move about 1,000 demonstrators when they were hit by the train.⁹⁸ Another report in December said that a Nanjing man was crushed to death by a bulldozer while he protested at his home.⁹⁹

Throughout 2003, Shanghai residents engaged in a protracted dispute with developers and officials over forced eviction. In March, police detained a group of forty-five protesters who traveled to Beijing to petition authorities, and sent them back to Shanghai.¹⁰⁰ Three protesters who attempted to travel to Beijing for the same purpose in April were detained at the train station and released later that day.¹⁰¹ Police reportedly detained 132 protesters at a demonstration in early May 2003.¹⁰² Later that month, over 150 protesters attempted to board a train to Beijing to present a petition to central authorities, and eighty were detained.¹⁰³ In early June, more than one hundred protesters were prevented from boarding a train with the goal of petitioning Beijing officials.¹⁰⁴ In September, a group of eighty-five petitioners succeeded in getting to Beijing, but were seized there by police from Shanghai, who returned them to Shanghai.¹⁰⁵ Some of those detained went on hunger strike in protest. Seven or eight were released in October.¹⁰⁶

Police targeted two outspoken advocates for the Shanghai protesters: Shen Ting, a Hong Kong woman whose parents had been evicted in Shanghai; and Zheng Enchong, a

⁹⁸ "Train kills Chinese protesters," BBC, December 12, 2003.

⁹⁹ *Bei yanmi fengsuo de xiaoxi: Nanjing dengfuxiang chaiqianhu Weng Biao zifen zhihou, you you liangren cansi zai chaiqian er zi zhixia* [Highly classified news: Two more people die in tragic demolition and eviction after Nanjing evictee Weng Biao's self-immolation], www.boxun.com.

¹⁰⁰ "Eviction petitioners rebuffed," Human Rights in China, March 13, 2003.

¹⁰¹ "Shanghai clearance petitioners thwarted again," Human Rights in China, April 17, 2003.

¹⁰² "Shanghai Clearance Protesters Arrested Under SARS Precautions," Human Rights in China, May 1, 2003.

¹⁰³ "Shanghai Clearance Protesters Prevented from Traveling to Beijing," Human Rights in China, May 20, 2003.

¹⁰⁴ "Shanghai Petitioners in June 4 Crackdown," Human Rights in China, June 4, 2003.

¹⁰⁵ "Detained Shanghai Petitioners in Hunger Strike," Human Rights in China, October 1, 2003.

¹⁰⁶ "Police release Shanghai property protesters," AFP, October 6, 2003.

lawyer who advocated for the rights of evicted tenants and who assisted a group of these in filing suit against Shanghai officials for corruption. Police arrested Zheng in June and charged him with “circulating state secrets.” As noted above, Zheng had faxed Chinese news reports about the cases and local labor protests to New York-based Human Rights in China. On October 28, Zheng received a three-year prison sentence.¹⁰⁷ On December 18, a Shanghai appeals court upheld the sentence.

In March 2004, Jiang Meili, Zheng’s wife, reported that she was bound, gagged, and abducted by police when she travelled to Beijing to present a petition on behalf of her husband to the National People’s Congress—the body charged with amending and supervising implementation of China’s constitution.¹⁰⁸

¹⁰⁷ “HRIC’s Statement on the Conviction of Zheng Enchong,” Human Rights in China, November 5, 2003.

¹⁰⁸ “Police accused of abducting leading Shanghai lawyer’s wife,” *South China Morning Post*, March 2, 2004.

IV. EXPERTS DEMAND REFORM: THE STATE'S RESPONSE

Chinese legal and policy experts have made a number of recommendations for reforms to address the abuses detailed here. Evicted tenants and their advocates have also made recommendations for reform. The Chinese state has itself been unusually prolific on the subject of demolition and eviction, with several state agencies expressing concern, issuing circulars, and promising reforms.

Human Rights Watch's recommendations to the Chinese government for policy change draw on recommendations by Chinese legal experts and activists, in the context of the international standards that China has committed to uphold. While the state's promises of legal reform are encouraging, the tendency appears to be toward reform of the letter of the law without addressing crucial problems of implementation. China's arbitration and judicial systems must be made to function better in order to realize the state's promises.

Much of the demolition and eviction underway in Beijing is related to China's preparations for the 2008 Olympics Games. As the Games approach, forced evictions will be under increasingly close scrutiny by the international community.

Criticism by Chinese legal experts

Much debate, at the grassroots level and in senior levels of government, has circled around China's constitution and the degree to which it does or should protect property rights. In particular, critics have pointed to article 10, which addresses reallocation of property rights; article 13, which protects the rights of individuals to income, savings, residence, and inheritance rights; and article 39, which prohibits illegal search or entry. This popular movement ultimately has succeeded in pressing senior officials to promise to amend the constitution.

One remarkable effort to strengthen the constitution was led by retired professor Liu Jincheng in Hangzhou, himself a victim of forced evacuation. Liu organized 116 residents to sign a petition calling on Beijing officials to investigate conflicts between the constitution and Hangzhou's demolition regulations.¹⁰⁹ On March 7, 2003, he led a small group of Hangzhou residents in writing phrases such as "protecting constitutional law is everyone's responsibility" on white overcoats. Wearing the overcoats, they walked to the local government compound, where two major meetings were convening. At the government compound, officials reportedly told Liu, "You may not wear this kind of clothing to petition." Liu responded, "We are not petitioning, we're promulgating the constitution." Liu was subsequently arrested and remains embroiled in a series of lawsuits in Hangzhou courts.¹¹⁰ Other Chinese experts have raised procedural concerns about demolition regulations, arguing that they breach the constitution, the Legislation Law, the Civil Law and the Contract Law.¹¹¹

Promises of reform

In response to the wave of protests and calls for change by legal experts, the Chinese government issued a flurry of circulars and statements expressing concern and promising reform. While these are generally positive signals, the proposed reforms fail to address many of the key problems at stake.

First and most significantly, in December 2003, the National People's Congress Standing Committee approved draft constitutional amendments for consideration by the National People's Congress in March 2004, including an amendment to article 13 to bolster

¹⁰⁹ "Hangzhou bairen shangshu quanguo renda: Dui chaiqian tiaoli tiqi weixian shencha [One hundred Hangzhou people petition the National People's Congress: Recommend investigation of demolition and eviction regulations for contravening the Constitution]," *Falu fuwu shibao* [Law Service Times], August 1, 2003.

¹¹⁰ Sheng Xueyou, "Yici you zhengyide shimin 'xuanchuan xianfa' xingdong [A controversial instance of a city resident's 'Constitution promulgation' movement]," *Nanfang Zhoumo*, December 4, 2003.

¹¹¹ Xie Guangfei and Wang Xiaoxia, "Rang xingzheng quanli jinkuai tuichu chaiqian lingyu [Discussion: Residential demolition and eviction disputes unceasing, remove power away from the area]," *China Economic Times*, October 15, 2003. Zhang Fan, "Chaiqian jiu fen beihou you zhongda falu wenti [Serious legal problems in the background of demolition and eviction conflicts]," *China Economic Times*, October 22, 2003.

existing language protecting individual property rights.¹¹² This marks a success for the popular constitutional reform movement, and sets a positive precedent in general for Chinese movements for social change. It is an indication of the growing desire of many within China to move toward a system that respects the rule of law. As symbolism, the new amendment also signals a degree of government concern about the problems of evicted tenants.¹¹³

However, since Chinese constitutional law is not usually judiciable without implementing legislation, constitutional reforms will be of little immediate value for evicted residents. One Hangzhou official told Liu Jincheng that China's constitution was simply "a set of principles," while local regulations are "concrete."¹¹⁴ Thus, constitutional change will not in and of itself result in actual reform. But as one foreign expert on Chinese rural politics observed, "The first step is to have broad pronouncements on a grand scale. There will be no direct impact, but it signals a direction.... Constitutional reform will change the process because it creates a greater political space for proponents [of legal reform]."¹¹⁵

Second, on December 9, 2003, the State Council issued a notable circular on land requisition in rural areas that criticized the use of force in land expropriation and that criticized the state's participation in expropriation for commercial use. Among its conclusions, the State Council said, "We must establish a hearing system [to determine compensation standards] as well as a judicial and arbitrary [*sic*, probably "arbitration"] system for land requisition disputes."¹¹⁶ On December 30, the national Ministry of Construction issued new regulations on administrative rulings that permit forced

¹¹² Congressional Executive Committee on China, "Constitutional Amendments to be Considered by the National People's Congress in March 2004," January 27, 2004.

¹¹³ "China to make private property a right," AP, March 2, 2004.

¹¹⁴ "Hangzhou bairen shangshu quanguo renda: Dui chajian tiaoli tiqi weixian shencha [One hundred Hangzhou people petition the National People's Congress: Recommend investigation of demolition and eviction regulations for contravening the Constitution]," *Law Service Times*, August 1, 2003.

¹¹⁵ Human Rights Watch telephone interview with Albert B. [pseudonym], December 15, 2003.

¹¹⁶ BBC Monitoring Asia Pacific, December 9, 2003.

eviction. According to the new regulations, Demolition and Eviction Management departments may hold hearings before forced evictions are approved.¹¹⁷

However, as an editorial in the *New City* argued, given widespread conflicts of interest, these new rules will be ineffectual unless the entire arbitration process is taken out of the hands of agencies with a conflict of interest, such as most municipal demolition and eviction departments, and put in the hands of some more neutral third party.¹¹⁸

Third, the many reports of violent incidents in the process of forced evictions has led the government to issue statements condemning excesses in the implementation of forced eviction. On September 18, 2003, an official at the national Ministry of Construction warned work units against violating demolition and eviction laws and policies.¹¹⁹ On September 30, Beijing's Department of Land Management issued a circular calling for "civilized" demolition and eviction, and published a telephone hotline number that residents could call to file complaints.¹²⁰ On January 5, 2004, the national Ministry of Construction announced that residents should be given fifteen days' notice before forced eviction.¹²¹

There has also been at least one case where construction workers were held liable for a suicide protest. On November 7, Beijing municipal court held a government work unit

¹¹⁷ *Chengshi fangwu chaiqian xingzheng caijue gongzuo guicheng* [Regulations for urban residential demolition and eviction administrative arbitration work], no. 252, issued December 30, 2003, to be implemented March 1, 2004.

¹¹⁸ "Pínglun: Fangzhi chaiqian jiu fen bu duan, rang quanli tuichu chaiqian lingyu [Discussion: Residential demolition and eviction disputes unceasing, remove power away from the area]," *Xinjing Bao*, posted on www.sina.com.cn, January 2, 2004.

¹¹⁹ "Jianshebu guanyuan chen yao yansu cha chu weifa weigui chaiqian pinggu danwei [Ministry of Construction official announces it will seriously investigate local illegal and counter-policy demolition and eviction, and will evaluate work units]," *China News*, September 18, 2003, www.chinanews.com.cn/n/2003-09-18/26/348068.html.

¹²⁰ "Yeman chaiqian yao zhuiyan falu ziren, Beijing gongshi jubao dianhua [Savage demolition and eviction should study legal responsibility, Beijing publishes telephone number for reports]," *Beijing Entertainment News*, September 30, 2003.

¹²¹ "Jianshebu: Qiangzhi chaiqian ying tiqian shiwu ri tongzhi bei chaiqianren [Construction bureau: Forced evictions should be announced fifteen days in advance to evictees]," New China News Agency, January 5, 2004.

responsible for the suicide of a resident during construction near his home. The man drank poison in front of construction workers to protest the construction, and instead of calling for medical help, the workers simply walked away and left him. The court found that the construction was undertaken without the proper permits and that construction workers had failed to attempt to save the man. The court charged the work unit to pay compensation to the family, including the cost of his funeral.¹²²

While all these are steps forward, most of these reforms do not adequately address the crucial problems of implementation and enforcement posed by the weak arbitration and judicial systems. China must engage in much more difficult reforms, particularly improving the administration of justice, in order to address demolition and eviction issues effectively.

¹²² Niu Aimin, "*Beijing qiangjian gongci zhi jumin zisha* [Forced construction of public toilet in Beijing leads to resident's suicide]," New China News Agency, November 8, 2003.

V. RECOMMENDATIONS

Recommendations to the Chinese Government:

- ***Hold officials accountable for failure to enforce existing regulations that protect the interests of evictees.*** Establish an office at the national level with ombudsmen at the provincial levels to register and investigate complaints of abuses relating to forced evictions. These offices should be independent of the demolition and eviction management departments, and should be empowered to negotiate resolutions between developers, management departments and residents, and when necessary, to file lawsuits.
- ***Release Zheng Enchong, Xu Yonghai, and all other jailed tenants' rights advocates.*** The Chinese government should immediately release from detention Zheng Enchong, Xu Yonghai, and other tenants' rights advocates who are being detained for exercising their rights to freedom of expression, association, and assembly. The Chinese government should be listening to those who have struggled with the practical obstacles to due process, and should be requesting their recommendations for policy reform. The arbitrary arrest and detention of Zheng Enchong and other tenants' rights advocates has deterred lawyers who might handle property cases and others providing assistance to tenants at risk of eviction.
- ***Uphold the rights to freedom of expression, assembly, and association.*** The government must recognize the rights of tenants and their advocates to speak out publicly on evictions and demolitions and other issues of concern. Article 35 of China's constitution guarantees the right to freedom of expression, association and assembly. As a member of the United Nations, China has promised to abide by the Universal Declaration of Human Rights, proclaimed by the U.N. General Assembly in 1948, which protects rights to free expression, assembly, and

association.¹²³ The provisions of the Universal Declaration are widely accepted as customary international law. China is a signatory to the International Covenant on Civil and Political Rights, which guarantees the rights to freedom of expression (article 19), peaceful assembly (article 21), and association with others (article 22).

- ***Require community consultation as part of city planning.*** While mass resettlement poses different problems than neighborhood demolition and eviction, policies that have been developed for the former could be used for the latter. For instance, international financial institutions that fund or fundraise for projects in China require that project officials consult with affected communities. The World Bank's policy on involuntary resettlement requires that in projects requiring eviction, "Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs."¹²⁴ It also requires that displaced persons be "consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives."¹²⁵ China should establish a requirement for community consultation in its national and local demolition and eviction regulations.
- ***Require that tenants be given adequate advance notice of eviction.*** The national Regulations for the Management of Urban Residence Demolition and Eviction should be revised to include a requirement that municipal demolition and eviction management departments give advance notice to evictees. This period should include enough time for the negotiation of compensation agreements and for resettlement. Local regulations in cities and provinces should be similarly revised to include the same provisions.

¹²³ Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly resolution 217 A (III) on December 10, 1948.

¹²⁴ World Bank Operational Policy on Involuntary Resettlement OP 4.12 Involuntary Resettlement, December 2001, para. 2(b).

¹²⁵ World Bank Operational Policy on Involuntary Resettlement OP 4.12 Involuntary Resettlement, December 2001, para. 6 (a) (ii).

- ***Have government officials and police on site to monitor forced eviction.*** In cases where courts find that forced eviction is permissible, the General Comment on the right to housing of article 11 of the ICESCR recommends that government officials be present to monitor the process of forced eviction. Chinese regulations should be revised to meet this international standard. In cases where violent incidents occur, the authorities should investigate and prosecute those responsible.
- ***Revise regulations that permit demolitions during pending lawsuits.*** Chinese national and local regulations should be revised to eliminate the provisions permitting demolitions of homes even while lawsuits are pending.
- ***Create a functioning arbitration system.*** Chinese legal experts have made a number of recommendations for the improvement of the existing arbitration procedures in urban and rural areas. This is one area in which there have been some efforts by the government to respond to protests and calls for reform. Until the state establishes more effective mechanisms for investigation and elimination of corruption in local governments, the arbitration of demolition and eviction disputes should be put in the hands of an unbiased third party, such as an ombudsman or non-governmental organization.
- ***Expand pilot legal aid projects.*** The ICESCR General Comment on housing rights recommends the provision of legal aid to tenants who wish to file lawsuits to prevent their forced eviction.¹²⁶ While small legal aid clinics exist in most areas, legal aid programs are not available to most Chinese citizens who need them.¹²⁷ China should expand its legal aid programs to guarantee that legal representation is made available to those who cannot afford it.

¹²⁶ CESCR General Comment 7, "The right to adequate housing (art. 11.1 of the Covenant): forced evictions," Sixteenth session, 1997, para. 15.

¹²⁷ "Falu yuanzhu zai zhongguo [Legal aid in China]," *Southern Weekend*, November 13, 2003.

- ***Strengthen judicial independence in China's court system.*** Chinese lawmakers should enact provisions to strengthen weak local courts, strengthen judicial independence and eliminate the direct and indirect intervention of the Communist Party in the day-to-day workings of the judiciary. To enhance judicial independence at the local level, funding and personnel for local courts should be funneled through the People's Court system, independent of local government agencies.

Recommendations to international financial institutions, developers, construction companies, architectural firms, and others involved in building projects in China:

- ***Show due diligence in ensuring that local authorities protect due process rights for evictees.*** The World Bank Operational Policy on Involuntary Resettlement aims to ensure that involuntary resettlement related to Bank projects is carried out with due process, adequate compensation and with the full participation and consideration of the affected people. This policy should be used as a baseline, though lenders and businesses should take additional steps to ensure that analysis and evaluation is done by monitors who are truly independent of the government. In addition, international investors and businesses involved in construction projects in China should require that local authorities provide advanced notice to residents of eviction, monitor the process of forced evictions, avoid use of force, and establish functional arbitration and judicial procedures for residents who refuse to relocate. They should monitor and report on compliance with these requirements.
- ***Businesses should conduct a risk analysis of forced evictions in target project areas, and develop policies to prevent abuses.*** Businesses should conduct an analysis of the process of forced evictions in project areas that includes

an examination of persons currently living in the planned building site, and the background and prior conduct of contractors and the local development and eviction management department. Based on this analysis, they should develop policies that will minimize negative impact on residents.

- As part of working agreements with Chinese partners, press for the reform of national and local demolition and eviction regulations. Regulations should be reformed to include basic due process protections for evicted residents, and to eliminate provisions that permit demolition during pending lawsuits.

Recommendations to the United Nations:

- *The U.N. Special Rapporteur on Adequate Housing* should write to the Chinese government raising concerns about forced eviction violations, and should request an invitation to conduct a mission to China.
- *The U.N. Special Rapporteur on Human Rights Defenders* should write to the Chinese government calling for the release of Zheng Enchong.
- *The Committee on Economic, Social and Cultural Rights* should raise questions about forced eviction violations in relation to China's first report to the Committee, which was submitted in 2003.

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